

INTERMOUNTAIN EXPLORATION CO.

IBLA 78-198

Decided May 4, 1978

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting appellant's request to modify coal lease SL 050641.

Vacated and remanded.

1. Coal Leases and Permits: Leases

The Secretary of the Interior has authority to reject a request to modify a coal lease by adding 160 acres to it where the record discloses a rational basis for the conclusion that the acreage sought is capable of being developed as part of an independent operation.

2. Coal Leases and Permits: Leases -- Geological Survey

The Geological Survey is the Secretary's technical expert in matters concerning coal permits and leases and the Secretary is entitled to rely on its reasoned analysis.

3. Coal Leases and Permits: Leases -- Geological Survey

Where a request to modify a coal lease by adding acreage to it is rejected by the BLM solely on the basis of conclusory statement of the Geological Survey that the area applied for is capable of being developed as part of an independent operation and the factual basis for that conclusion does not appear in the record,

the decision will be set aside and the case remanded for the compilation of a more complete record and of the request.

APPEARANCES: H. Byron Mock, Esq., Mock, Shearer and Carling, Salt Lake City, Utah, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE RITVO

Intermountain Exploration Co. has appealed from a decision dated December 23, 1977, of the Utah State Office, Bureau of Land Management (BLM), rejecting its petition to modify coal lease SL 050641. <sup>1/</sup> Appellant had petitioned to add 160 acres to its lease pursuant to section 13(b) of the Federal Coal Leasing Amendment Act of 1975, 90 Stat. 1090, 43 U.S.C. § 203 (1977 Supp.). The State Office rejected the petition on the ground that lands applied for can be developed as part of an independent operation.

The State Office based its decision upon the pertinent regulation which provides: "(2) Competitive. If however, it is determined that the additional lands or deposits can be developed as part of an independent operation, or that there is competitive interest in them, they will be offered as provided in Subpart 3520." 43 CFR 3524.2-1(a)(2)(ii); 42 FR 4453.

Prior to issuing its decision, the State Office had requested Geological Survey's (Survey) recommendation. On December 12, 1977, Survey replied: "It is our conclusion that the lands requested can be developed as part of an independent operation. Therefore, the modification as requested does not meet the provisions of 43 CFR 3524.2-1(a)(2)(ii)." In its decision, the State Office merely repeated this conclusion.

In its appeal, Intermountain says that the modification requested would be in the public interest and that it can mine the subject acreage through its existing portal without disruption of surface resources. It adverts to the criteria it says Survey and the BLM use for determining whether a tract of land is capable of being developed independently and asserts that, using such criteria, its request should be granted. It also contends that the subject acreage could not be developed as an independent operation if only that acreage is considered.

---

<sup>1/</sup> For prior proceedings in this matter, see Intermountain Exploration Company, 32 IBLA 170 (1977); 17 IBLA 261 (1974).

Finally, it states that if the Survey or BLM has ever made a determination as to this tract using its criteria, it has not seen it or been approached for information. It concludes that the BLM's rejection for the reason stated lacks a proper factual foundation.

We agree. The issue raised by the appeal is whether a decision rejecting a request for modification of a coal lease in the exercise of the Secretary's discretionary authority will be affirmed where the decision is based on a conclusory statement without factual support in the record.

[1] Under the Act, supra, and Regulation, supra, the Secretary has authority, in his discretion, to reject a request for modification of a lease if, among other reasons, the subject acreage is capable of being developed as part of an independent operation. The Board has stated the pertinent legal principles several times recently in cases involving the rejection of high bids offered at competitive oil and gas lease sales, where the BLM acts upon the advice of the Survey.

[2, 3] The Survey is the Secretary's technical expert in matters such as this, and he is entitled to rely on Survey's reasoned analysis, Coquina Oil Corporation, 29 IBLA 310 (1977), even when the decision is made by the BLM entirely upon the basis of the Survey recommendation. Id., Basil W. Reagel, 34 IBLA 29 (1978), Gerald S. Ostrowski, 34 IBLA 254 (1978). See also, Harris R. Fender, 33 IBLA 216 (1977).

However, where the request is not spurious or unreasonable upon its face, the record must disclose the factual basis for the BLM's action. There must be sufficient evidence in the record to demonstrate that the BLM's action is not arbitrary or capricious. Ostrowski, supra; Reagel supra. If there is nothing in the record but the bare conclusion of Survey, repeated by the BLM, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the request for modification. 2/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the

---

2/ The BLM may, however, consider any other provisions of the statute or regulation relevant to adjudicating the modification, and its determination must take into account current Departmental policies and pertinent litigation.

decision of the State Office is vacated and the case remanded for further proceedings consistent herewith.

---

Martin Ritvo  
Administrative Judge

We concur:

---

Douglas E. Henriques  
Administrative Judge

---

Joan B. Thompson  
Administrative Judge

